

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #14	CCRB Case #: 202003770	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 11:00 PM	Location of Incident: 5th Avenue between Bergen Street and Saint Marks Place	Precinct: 78	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/01/2020 5:57 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/01/2020 5:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Adib Algahiti	21917	960108	072 PCT
3. Officers			
4. POF Krysta Cosenza	09372	961710	078 PCT
5. POM Arnold Rivas	14721	942433	078 PCT
6. POM Andrey Samusev	13822	958047	078 PCT
7. LT Eduardo Silva	00000	933356	078 PCT
8. POM Luis Melendez	17507	958921	078 PCT
9. POM Pedro Rodriguez	28987	942490	072 PCT
10. LT William Meyer	00000	916221	072 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Grace Mccaffrey	13686	957834	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Eduardo Silva	Force: Lieutenant Eduardo Silva used physical force against an individual.	
B.LT Eduardo Silva	Force: Lieutenant Eduardo Silva used physical force against an individual.	
C.LT Eduardo Silva	Force: Lieutenant Eduardo Silva used physical force against an individual.	
D.LT Eduardo Silva	Force: Lieutenant Eduardo Silva used physical force against an individual.	
E.LT Eduardo Silva	Force: Lieutenant Eduardo Silva used physical force against an individual.	
F.LT Eduardo Silva	Force: Lieutenant Eduardo Silva used physical force against an individual.	
G.LT Eduardo Silva	Force: Lieutenant Eduardo Silva struck individuals with an asp.	
H.POM Andrey Samusev	Abuse: Police Officer Andrey Samusev refused to provide his shield number to § 87(2)(b)	
I.POM Andrey Samusev	Abuse: Police Officer Andrey Samusev refused to provide his name to § 87(2)(b)	
J.POM Adib Algahiti	Off. Language: Police Officer Adib Algahiti made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
K.POM Adib Algahiti	Discourtesy: Police Officer Adib Algahiti spoke discourteously to § 87(2)(b)	
L.LT William Meyer	Force: Lieutenant William Meyer authorized the use of force against individuals.	
M.POM Pedro Rodriguez	Force: Police Officer Pedro Rodriguez struck an individual with a baton.	
N.POM Pedro Rodriguez	Force: Police Officer Pedro Rodriguez struck an individual with a baton.	
O. Officers	Force: Officers hit § 87(2)(b) against a vehicle.	
P. Officers	Force: Officers used physical force against § 87(2)(b)	
Q. Officers	Force: Officers used physical force against § 87(2)(b)	
R. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	
S. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	
T. Officers	Force: Officers struck individuals with batons.	
	§ 87(4-b), § 87(2)(g)	
	§ 87(4-b), § 87(2)(g)	
	§ 87(4-b), § 87(2)(g)	
	§ 87(4-b), § 87(2)(g)	

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

### Case Summary

On June 1, 2020, § 87(2)(b) filed this complaint via the CCRB's online website. On June 5, 2020, § 87(2)(b) filed a duplicate of this complaint via the CCRB's online website.

On May 29, 2020, at approximately 11:00 p.m., in the vicinity of 5<sup>th</sup> Avenue between Bergen Street and Saint Marks Place in Brooklyn, § 87(2)(b) and his two friends, § 87(2)(b) and § 87(2)(b) observed a Black Lives Matter protest occur from a rooftop. § 87(2)(b) attended the protest on his bicycle alone. § 87(2)(b) attended the protest with her boyfriend, § 87(2)(b) and similarly, § 87(2)(b) attended the protest with his girlfriend, § 87(2)(b) and § 87(2)(b) also attended the protest.

Lieutenant Eduardo Silva and Police Officers Arnold Rivas, Andrey Samusev, Krysta Cosenza, and Luis Melendez, all of the 78<sup>th</sup> Precinct, responded to calls for assistance at the location, as did Police Officers Adib Algahiti and Pedro Rodriguez of the 72<sup>nd</sup> Precinct. When Lieutenant Silva arrived, he pushed an unidentified protestor wearing a white t-shirt, dark pants, and backpack twice (**Allegations A and B: Force**, § 87(2)(g)). Lieutenant Silva proceeded to push three other unidentified protestors (**Allegations C-E: Force**, § 87(2)(g)). Lieutenant Silva then pushed an unidentified male protestor to the ground (**Allegation F: Force**, § 87(2)(g)). Lieutenant Silva allegedly struck another unidentified protestor with an asp (**Allegation G: Force**, § 87(2)(g)). PO Samusev allegedly refused to provide his shield number and name to § 87(2)(b) (**Allegation H: Abuse of Authority**, § 87(2)(g) and **Allegation I: Abuse of Authority**, § 87(2)(g)). During the course of § 87(2)(b)'s arrest, PO Algahiti called him a "bitch" and a "pussy" (**Allegations J and K: Offensive Language and Discourtesy**, § 87(2)(g)). Lieutenant William Meyer of the 72<sup>nd</sup> Precinct authorized the use of force against individuals (**Allegation L: Force**, § 87(2)(g)). PO Rodriguez pushed a female protestor twice with his baton (**Allegations M and N: Force**, § 87(2)(g)). Officers allegedly hit § 87(2)(b) against a vehicle during the course of her arrest (**Allegation O: Force**, § 87(2)(g)). Unidentified officers allegedly smashed § 87(2)(b)'s face into the ground during the course of her arrest, pushed § 87(2)(b) into a parked vehicle, damaged her bicycle during the course of her arrest, and used baton strikes against unidentified protestors (**Allegations P and Q: Force**, § 87(2)(g); **Allegation R: Abuse of Authority**, § 87(2)(g); **Allegation T: Force**, § 87(2)(g)). An unidentified officer also threatened to arrest § 87(2)(b) (**Allegation S: Abuse of Authority**, § 87(2)(g)).

§ 87(4-b), § 87(2)(g)

Both cellphone video and body-worn camera video of this incident was received, and the relevant aspects are discussed in further detail below.

This incident, specifically video footage recorded by § 87(2)(b) received media coverage in the New York Times and this case was thus designated as sensitive (BR 52).

§ 87(2)(b) and § 87(2)(b) were both arrested and released with criminal court summonses for § 87(2)(b), § 87(2)(a) 160.50 and § 87(2)(b), § 87(2)(a) 160.50, respectively. These arrests are not listed in the Office of Court Administration's (OCA) or ECOURTS databases. § 87(2)(b) was arrested and issued a Desk Appearance Ticket (DAT) for § 87(2)(b), § 87(2)(a) 160.50 and § 87(2)(b) was arrested for § 87(2)(b), § 87(2)(a) 160.50. Neither § 87(2)(b) nor § 87(2)(b)'s arrests were listed in the OCA or ECOURTS databases.

## **Findings and Recommendations**

**Allegation (A) Force: Lieutenant Eduardo Silva used physical force against § 87(2)(b)**

**Allegation (B) Force: Lieutenant Eduardo Silva used physical force against § 87(2)(b)**

The investigation established the following facts:

On May 29, 2020, at approximately 11:00 p.m., officers requested assistance at 5<sup>th</sup> Avenue and Bergen Street in Brooklyn due to a police vehicle on fire. Police Officers Samusev, Rivas, Cosenza, Melendez, Algahiti, Rodriguez, and Lieutenant Silva responded to the requests for assistance. Upon arrival, protestors were scattered on 5<sup>th</sup> Avenue between Bergen Street and Saint Marks Place, including § 87(2)(b)

§ 87(2)(b) and § 87(2)(b). Lieutenant Silva pushed several protestors, at least one of which fell to the ground, as he cleared protestors from the street. Several arrests were made, including those of § 87(2)(b) and § 87(2)(b) (BR 01), § 87(2)(b) (BR 02), and § 87(2)(b) (BR 03) were watching the protest from the rooftop terrace of § 87(2)(b) in Brooklyn. § 87(2)(b) and § 87(2)(b) similarly said that a marked police vehicle traveled down Bergen Street and almost struck protestors in the street. Lieutenant Silva then exited from an unmarked vehicle a short time later.

§ 87(2)(b) testified that once Lieutenant Silva exited his vehicle, he began indiscriminately pushing approximately five protestors, some of whom had their backs turned to him. § 87(2)(b) said that when Lieutenant Silva exited his vehicle, he immediately shoved a male protestor wearing a bike helmet and backpack in the back, causing the male to stumble to the ground. § 87(2)(b) said that Lieutenant Silva also pushed other protestors besides the male discussed and analyzed in Allegation F, but § 87(2)(b) could not identify any other specific instances of this behavior.

According to § 87(2)(b) (BR 04), who participated in the protest with her boyfriend, § 87(2)(b) Lieutenant Silva either pushed a male protestor wearing a backpack from behind or struck him with an asp, causing the protestor to fall to the ground, though § 87(2)(b) could not remember for certain whether Lieutenant Silva pushed the protestor or used his asp.

§ 87(2)(b) (BR 05) said that Lieutenant Silva also pushed a male protestor on his chest, in addition to the male protestor discussed in Allegation F.

§ 87(2)(b) and § 87(2)(b) were unavailable to the investigation, and § 87(2)(b) and § 87(2)(b) were uncooperative with the investigation (see IAs for contact attempts). As such, statements from them were not obtained.

In § 87(2)(b)'s video (BR 06-07), which was taken from § 87(2)(b)'s and § 87(2)(b)'s rooftop, before Lieutenant Silva arrives, protestors near the crosswalk toward the middle of the screen throw objects, including a trashcan, in the direction of two uniformed police officers (<<01:38 – 01:58>>). An ambulance is also traveling down 5<sup>th</sup> Avenue. When Lieutenant Silva arrives and exits his unmarked vehicle, which is stopped in the middle of the intersection, he walks toward a group of protestors across the street and immediately pushes a protestor, who is wearing a white t-shirt, backpack, and dark pants and is standing in the intersection a few feet from the crosswalk with his back toward Lieutenant Silva, in the back toward the crosswalk. Due to Lieutenant Silva's push, the protestor lunges toward the crosswalk, taking approximately two steps. The protestor then turns around and faces Lieutenant Silva, who pushes the protestor again, one time on his chest, toward the curb. A person in the crowd on the opposite side of the street from Lieutenant Silva throws a glass object across the street, in the direction of officers. The glass object then shatters (<<2:11 – 2:21>>).

§ 87(2)(b) provided a total of three cellphone videos, including the video she posted on Twitter. In the first video (BR 18), Lieutenant Silva approaches a group of protestors and tells them to, "Get back." Protestors yell back at Lieutenant Silva. At 00:04, Lieutenant Silva uses his left hand to push the same male protestor wearing a white t-shirt, dark pants, and backpack as depicted in § 87(2)(b)'s video. The male takes approximately two steps back as a result of Lieutenant Silva pushing him, but does not fall to the ground. Protestors continue to yell and Lieutenant Silva issues

commands for protestors to get on the sidewalk. Lieutenant Silva then lunges to the left, though his exact actions are not clear due to § 87(2)(b) blocking the camera. At 00:14, the same male protestor gets off the ground, though the video does not capture how he ended up on the ground.

The investigation received 37 body-worn camera videos, but none of the footage captured this use of force. As mentioned above, Lieutenant Silva did not activate his body-worn camera during this incident.

Lieutenant Silva (BR 08) testified that after he responded to calls for assistance near the Brooklyn Museum, he and his driver, PO Rivas, went back to the 78<sup>th</sup> Precinct stationhouse. After hearing approximately five 10-85s (requests for additional units) at Bergen Street and 5<sup>th</sup> Avenue, PO Rivas and Lieutenant Silva responded to the location. Upon arrival, there were approximately five officers present and hundreds of protestors in the street, who were throwing objects such as milkcrates, pavers, and bottles at the officers. Lieutenant Silva said to protestors, “This is not a fucking game. Get on the fucking sidewalk,” at the “top of [his] lungs.” Lieutenant Silva pushed protestors back toward the sidewalk because they were not complying with his orders and were throwing objects at officers. Lieutenant Silva did not remember pushing or interacting with any protestors in particular, and could not estimate how many people he pushed. Lieutenant Silva said it was “possible” that people fell to the ground as a result of his pushes, but he used the “minimal amount of force” possible to get people on the sidewalk.

PO Rivas (BR 09), Lieutenant Silva’s operator, did not know what Lieutenant Silva was doing on scene and did not see him push or otherwise use physical force against any protestors. PO Samusev (BR 10) did not see Lieutenant Silva interact with any protestors besides the individual discussed in Allegation F. PO Cosenza (BR 11) did not see Lieutenant Silva push any protestors, particularly to the ground, and PO Melendez (BR 12) had no recollection of seeing Lieutenant Silva on scene. PO Algahtiti (BR 13) did not see any officers wearing white shirts push any protestors.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide Procedure 221-01 (BR 14).

§ 87(2)(g)

**Allegation (C) Force: Lieutenant Eduardo Silva used physical force against § 87(2)(b)**

**Allegation (D) Force: Lieutenant Eduardo Silva used physical force against § 87(2)(b)**

**Allegation (E) Force: Lieutenant Eduardo Silva used physical force against § 87(2)(b)**

As mentioned in Allegations A and B, both § 87(2)(b) and § 87(2)(b) said that Lieutenant Silva indiscriminately pushed protestors upon his arrival. Neither § 87(2)(b) nor § 87(2)(b) knew the identity of the protestors, as they were watching the protest from a nearby rooftop.

In § 87(2)(b)’s video, after Lieutenant Silva pushes the protestor wearing a white t-shirt, backpack, and dark pants, Lieutenant Silva points toward the sidewalk with his left hand multiple times. As Lieutenant Silva does so, a protestor throws a glass object from the left side of the screen across the street from Lieutenant Silva, which shatters near officers standing at the corner opposite Lieutenant Silva. Lieutenant Silva then turns to his left and pushes two protestors, with one hand on each of the protestors’ chests, toward the sidewalk and curb area. The protestors move back as a result of Lieutenant Silva’s pushes, but do not fall to the ground. The crowd becomes denser and Lieutenant Silva then pushes a protestor with his left hand, causing the protestor to move back

toward the sidewalk (<<2:21 – 02:31>>).

As discussed in Allegations A and B, Lieutenant Silva testified that upon his arrival, there were approximately five officers present and hundreds of protestors in the street, who were throwing objects such as milkcrates, pavers, and bottles at the officers. Lieutenant Silva said to protestors, “This is not a fucking game. Get on the fucking sidewalk,” at the “top of [his] lungs.” Lieutenant Silva pushed protestors back toward the sidewalk because they were not complying with his orders and were throwing objects at officers. Lieutenant Silva did not remember pushing or interacting with any protestors in particular, and could not estimate how many people he pushed.

Per § 87(2)(b)'s video, at the time Lieutenant Silva turns to his left and pushes the additional three protestors, he has been on scene and interacting with protestors for approximately 20 seconds, and does at least point toward the sidewalk while interacting with the protestors. Although a protestor throws an object in the direction of officers standing at the corner opposite Lieutenant Silva, the protestor who threw the object is on the other side of the street and is not one of the protestors Lieutenant Silva pushes. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (F) Force: Lieutenant Eduardo Silva used physical force against § 87(2)(b)**

§ 87(2)(b) (BR 15), who was observing the protest on his bicycle, saw a marked police vehicle drive down Bergen Street at an “unsafe speed” in the direction of several hundred protestors. When the vehicle came to an abrupt stop, two officers exited and approached the crowd. Protestors surrounded the officers, who backed up toward their vehicle and left the location. A few minutes later, additional officers arrived, including Lieutenant Silva. Lieutenant Silva “aggressively postured” toward the protestors, as he raised his arms in the air and yelled at protestors, though § 87(2)(b) could not hear any statements Lieutenant Silva made. When § 87(2)(b) was approximately 15 to 20 feet away from Lieutenant Silva, Lieutenant Silva pushed a male protestor, who was much smaller than Lieutenant Silva, on his chest, which caused the male protestor to fall backwards on his back. The male protestor got back up, but § 87(2)(b) could not see if the man sustained any injuries.

§ 87(2)(b) and § 87(2)(b) all stated that after exiting his vehicle, Lieutenant Silva pushed a male protestor, who was standing a few feet away from and facing him, causing the male to fall to the ground and land on his buttocks. Protestors then began throwing objects, particularly trash, at the officers.

§ 87(2)(b) who recorded the video of Lieutenant Silva pushing at least one male protestor and posted it on Twitter, which was then included in the large New York Times article, said that she and her boyfriend, § 87(2)(b) participated in the protest. Both § 87(2)(b) and § 87(2)(b) said that a marked police vehicle drove at a high rate of speed and almost struck protestors in the street. Lieutenant Silva said, “Move back,” and proceeded to push a male protestor, who had a slender build and was wearing a hat, causing the protestor to fall to the ground. The protestor’s hands were up at the time Lieutenant Silva pushed him. § 87(2)(b) was approximately four feet away from Lieutenant Silva at the time of the push.

§ 87(2)(b) said that Lieutenant Silva approached protestors and yelled at them to get off the street. A protestor, described as a tall, skinny, white male, approximately in his early or mid-20s, yelled back at Lieutenant Silva. When the male yelled back, Lieutenant Silva shoved the male, who was standing on the curb, on his chest, causing him to fall to the ground. § 87(2)(b) was approximately four to five feet away from the area in which Lieutenant Silva pushed the protestor.

None of the aforementioned civilians knew the male who was pushed and the investigation therefore could not identify and obtain a statement from him.

§ 87(2)(b) and § 87(2)(b) all took cellphone video footage which captured

Lieutenant Silva pushing the male protestor.

In § 87(2)(b)'s video (BR 16-17), protestors are largely clustered on the corner of Bergen Street and 5<sup>th</sup> Avenue. The protestors throw at least two indistinguishable objects toward the direction of officers, one of whom is Lieutenant Silva. Lieutenant Silva briefly exits the frame before § 87(2)(b) moves his phone back in Lieutenant Silva's direction. As § 87(2)(b) does so, Lieutenant Silva approaches a protestor wearing a black t-shirt, khaki shorts, and a baseball cap, takes one step toward the protestor with his left leg, and pushes the protestor on the chest, causing the protestor to fall to the ground on his back. Any conversation which may have occurred is not audible due to the noise and commotion from the crowd (<<09:59 – 10:18>>).

In § 87(2)(b)'s video, which was taken from § 87(2)(b)'s and § 87(2)(b)'s rooftop, after Lieutenant Silva pushes the protestors as discussed in Allegations A-E, the crowd throws objects in the direction of Lieutenant Silva and other officers, but then slowly becomes less concentrated and moves away from the officers (<<2:11 – 2:56>>). A male protestor, wearing a black t-shirt, khaki shorts, baseball cap, and mask, stands a few feet off the sidewalk. The male outstretches his arms parallel to his body. Lieutenant Silva then steps toward the male and pushes him on the chest using both of his arms. The male then falls to the ground before getting back up (<<02:56 – 03:05>>).

In § 87(2)(b)'s second video (BR 19), Lieutenant Silva approaches the male protestor wearing a black t-shirt, khaki shorts, and a baseball cap. A voice says, "Back up," or something similar, though the audio and who makes the statement is not clear. Lieutenant Silva then pushes the male with open palms on his chest area, causing the male to land on his back on an overturned garbage can and then land on the ground. The video § 87(2)(b) posted to Twitter (BR 20) similarly captures Lieutenant Silva approach the male, point at him, and push him to the ground on his chest, while the male's arms are extended parallel to his body.

As mentioned in Allegations A-E, Lieutenant Silva testified that after he responded to calls for assistance near the Brooklyn Museum, he and his driver, PO Rivas, went back to the 78<sup>th</sup> Precinct stationhouse. After hearing approximately five 10-85s (requesting additional units) at Bergen Street and 5<sup>th</sup> Avenue, PO Rivas and Lieutenant Silva responded to the location. Upon arrival, there were approximately five officers present and hundreds of protestors in the street, who were throwing objects such as milkcrates, pavers, and bottles at the officers. Lieutenant Silva said to protestors, "This is not a fucking game. Get on the fucking sidewalk," at the "top of [his] lungs." Lieutenant Silva pushed protestors back toward the sidewalk because they were not complying with his orders and were throwing objects at officers. Lieutenant Silva did not remember pushing or interacting with any protestors in particular and could not estimate how many people he pushed. Lieutenant Silva said it was "possible" that people fell to the ground as a result of his pushes, but he used the "minimal amount of force" possible to get people on the sidewalk.

Lieutenant Silva reviewed § 87(2)(b)'s Twitter video, and identified himself as the officer in the white shirt. Lieutenant Silva believed the video was "sped up" and made him "look like Superman." Lieutenant Silva denied pushing any protestor "that hard" and commented that it looked like the protestor was intentionally falling backwards.

PO Rivas, who was Lieutenant Silva's operator, similarly testified that upon arrival, approximately 50 or more protestors were standing in the street throwing objects at officers. PO Rivas primarily focused on avoiding being hit by any objects and did not see what Lieutenant Silva was doing on scene, including whether Lieutenant Silva pushed any protestors to the ground. PO Rivas reviewed § 87(2)(b)'s Twitter video, but did not recall seeing Lieutenant Silva push the individual on scene as depicted in the video.

PO Samusev testified that Lieutenant Silva instructed protestors to get on the sidewalk multiple times, but they refused to comply. Protestors, including one male protestor, were yelling at Lieutenant Silva, but PO Samusev did not recall exactly what they said. Lieutenant Silva then pushed the male protestor, who refused to comply with Lieutenant Silva's command to get on the sidewalk, causing the protestor to fall to the ground. PO Samusev did not recall if the male protestor made any threatening statements or had thrown any objects at Lieutenant Silva before he was



pushed. PO Samusev did not see how the male protestor landed on the ground and did not see if the male had any injuries. PO Samusev did not see Lieutenant Silva interact with any other protestors.

PO Cosenza similarly testified that she saw Lieutenant Silva on scene, walking by himself, but did not see him push any protestors to the ground. PO Cosenza also reviewed § 87(2)(b)'s Twitter video but did not see Lieutenant Silva push the protestor during the incident as depicted in the video.

PO Melendez testified that he did not recall seeing Lieutenant Silva on scene. PO Melendez reviewed § 87(2)(b)'s Twitter video but had no recollection of seeing Lieutenant Silva push a protestor as depicted in the video.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide Procedure 221-01.

§ 87(2)(g) The video file was analyzed via InputAce, and its diagnostics did not return any evidence of altering. § 87(2)(g)

§ 87(2)(g)

**Allegation (G) Force: Lieutenant Eduardo Silva struck individuals with an asp.**

According to § 87(2)(b) after Lieutenant Silva pushed the male protestor as discussed in Allegation F, Lieutenant Silva took his asp out and started hitting a protestor with it for over 30 seconds. § 87(2)(b) did not see what caused the encounter or where Lieutenant Silva was hitting the individual.

No other civilians raised allegations regarding Lieutenant Silva using his asp to strike protestors.

§ 87(2)(b)'s video, which captures Lieutenant Silva after he pushed the male discussed in Allegation F, does not depict Lieutenant Silva remove his asp and strike a protestor with it (<<02:58 – 03:17>>). Lieutenant Silva remains in frame for approximately 19 seconds before exiting off screen, and then reentering (<<3:40>>).

§ 87(2)(b)'s and § 87(2)(b)'s cellphone videos similarly do not capture Lieutenant Silva immediately after the protestor discussed in Allegation F was pushed.

Lieutenant Silva denied striking any protestor with his asp. PO Algahiti, PO Rivas, PO Cosenza, and PO Melendez did not see any officers use asp strike against a protestor. PO Samusev did not recall seeing any officers use asp strikes against a protestor.

§ 87(2)(g)

**Allegation (H) Abuse of Authority: Police Officer Andrey Samusev refused to provide his shield number to § 87(2)(b)**

**Allegation (I) Abuse of Authority: Police Officer Andrey Samusev refused to provide his name to § 87(2)(b)**

According to § 87(2)(b) (BR 21), she was standing on the corner of 5<sup>th</sup> Avenue and Saint Marks Place with her bicycle, right off the sidewalk. § 87(2)(b) was alone and was not doing anything other than standing with her bike. PO Samusev, who was alone, approached § 87(2)(b) and intentionally hit her bike with his riot shield. PO Samusev then applied pressure to the shield and pushed it into the bike. PO Samusev did not say anything to § 87(2)(b) as he pushed the shield into her bike. § 87(2)(b) then asked PO Samusev for his name and shield number, but PO Samusev walked away without providing his name and shield number to her.

§ 87(2)(b) provided a cellphone video she took after PO Samusev allegedly hit her bicycle with his riot shield (BR 22). In the video, § 87(2)(b) approaches PO Samusev, who is walking with a clear riot shield, and says, “Excuse me, officer. You hit me with your shield. Can I have your badge number, please?” PO Samusev responds, “Back up,” and points to his shield on his uniform with his asp. § 87(2)(b) simultaneously says, “Can I have your name and your badge number?” PO Samusev says, “Right here,” and says, “One, three, eight... [inaudible] ...78<sup>th</sup> Precinct.” The video contains significant amounts of background noise and abruptly ends after PO Samusev provides his command.

PO Samusev testified that as additional units began to arrive in response to 10-13 (officer needs assistance) calls, PO Samusev walked southbound on 5<sup>th</sup> Avenue. § 87(2)(b) was also walking southbound with her bike and had her cellphone in her hand. As PO Samusev was walking with his shield, § 87(2)(b) unintentionally bumped into PO Samusev on the right side of his body with her bicycle, causing her to drop her phone. PO Samusev told § 87(2)(b) to “go home,” which § 87(2)(b) “did not like,” though PO Samusev could not further describe what he meant by § 87(2)(b) not liking his instruction to go home, other than stating that § 87(2)(b) “probably said something.” PO Samusev did not remember what § 87(2)(b) said, including whether § 87(2)(b) asked for his name and shield number. PO Samusev denied ever refusing to provide his name and shield number to § 87(2)(b).

PO Samusev reviewed § 87(2)(b)'s cellphone video, which refreshed his recollection of § 87(2)(b) asking for his name and shield number. PO Samusev heard himself in the video provide both his name and shield number.

§ 87(2)(g)

§ 87(2)(b)'s video, however, does not audibly capture PO Samusev providing his name, in full or in part, as the video ends abruptly as PO Samusev is speaking with § 87(2)(b) and there is a significant amount of background noise. § 87(2)(g)

**Allegation (J) Offensive Language: Police Officer Adib Algahiti made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (K) Discourtesy: Police Officer Adib Algahiti spoke discourteously to § 87(2)(b)**

Police Officer Michael Friscia of the 72<sup>nd</sup> Precinct recorded § 87(2)(b)'s arrest on his body-worn camera. PO Friscia's body-worn camera footage (BR 25) captures PO Algahiti

stating, “Get up, stupid. Bitch ass pussy” (<<10:32 – 10:44>>).

In PO Algahiti’s body-worn camera video (BR 23-24), which captures a multitude of protestors and officers standing in the street, PO Algahiti tells another officer, “They’re throwing rocks.” The officer responds, “That person’s gonna get it,” to which PO Algahiti responds, “I know”(<<04:32 – 04:39>>). Approximately one minute later, PO Algahiti engages in a foot pursuit with a male, known to the investigation as § 87(2)(b) on the sidewalk. As § 87(2)(b) runs into the street, another officer runs into § 87(2)(b) causing § 87(2)(b) to fall into a parallel parked vehicle and then to the ground. PO Algahiti says, “Get up, stupid. Bitch ass pussy” (<<06:32 – 06:34>>).

§ 87(2)(b) declined to participate in this investigation due to his ongoing criminal case.

PO Algahiti testified that he saw § 87(2)(b) move his arms in a throwing motion while holding a ceramic flowerpot. PO Algahiti made eye contact with § 87(2)(b) who was approximately 10 to 15 feet away, and said, “Hey, get over here.” § 87(2)(b) then fled on foot and PO Algahiti and PO Friscia ran after him. After § 87(2)(b) was in handcuffs, PO Algahiti called § 87(2)(b) a “bitch” in the “heat of the moment” due to having objects thrown at him and other officers, which posed a threat to the safety of officers and protestors. PO Algahiti did not recall calling § 87(2)(b) a “pussy.”

PO Algahiti reviewed PO Friscia’s body-worn camera footage and confirmed that the voice saying “pussy” was in fact his own. PO Algahiti used the word “pussy” for the same reasons he used the word “bitch” as described above.

Officers are prohibited from using discourteous or disrespectful remarks regarding another person’s gender. NYPD Patrol Guide Procedure 203-10 (BR 26).

Officers may use discourteous language in the context of a dynamic situation over which officers are attempting to gain control. However, discourteous statements made with no legitimate purpose but to belittle the civilian are not permissible. Disciplinary Case 2015-15012 (BR 53).

§ 87(2)(g)

#### **Allegation (L) Force: Lieutenant William Meyer authorized the use of force against individuals.**

PO Rodriguez (BR 29) testified that he and Lieutenant Meyer responded to the location from the 72<sup>nd</sup> Precinct stationhouse in Brooklyn. Upon his arrival, PO Rodriguez observed a crowd of approximately 200 to 300 people blocking the street to vehicular and pedestrian traffic. While some people were peacefully protesting, others were throwing objects at approximately 15 officers already on scene. Lieutenant Meyer instructed PO Rodriguez to “try and restore order” by moving people onto the sidewalk. PO Rodriguez then took his straight baton and held it at either end with both his hands and extended his arms away from his body to push protestors out of the street.

As Lieutenant Meyer had retired as of January 4, 2021 per the CTS+ database, the investigation could not interview him regarding the authorization of force. It is therefore recommended that **Allegation L** be closed as **miscellaneous – subject retired**.

**Allegation (M) Force: Police Officer Pedro Rodriguez struck § 87(2)(b) with a baton.**

**Allegation (N) Force: Police Officer Pedro Rodriguez struck § 87(2)(b) with a baton.**

§ 87(2)(b) (BR 27) said that he moved with a group of protestors toward 5<sup>th</sup> Avenue and Saint Marks Place after attending a protest at the Barclays Center. In the vicinity of 5<sup>th</sup> Avenue and Saint Marks Place, § 87(2)(b) observed officers, whom he could not describe, use their batons to “lash out.” § 87(2)(b) described this as officers placing two hands on opposite ends of

their batons and using them to push outward to move protestors around.

Other than § 87(2)(b) alleging that Lieutenant Silva used asp strikes as discussed in Allegation G, no other civilians made allegations regarding officers using batons or asps to either push or strike a protestor.

PO Rodriguez's body-worn camera video (BR 28) captures officers engage in a foot pursuit with an unidentified individual. PO Rodriguez runs toward the area where both uniformed and plainclothes officers are on the ground arresting the individual. PO Rodriguez approaches protestors in the surrounding area with Lieutenant William Meyer of the 72<sup>nd</sup> Precinct and instructs protestors to back up (<<01:31 – 01:50>>). As the crowd continues to approach the area in which officers are arresting the unidentified individual on the ground, PO Rodriguez continues to instruct protestors to “get back” and pushes protestors away from the area in which the arrest is occurring. A female wearing a yellow jacket is visible emerging from the back of the crowd, and walking toward the front of the crowd, near where PO Rodriguez is standing. As PO Rodriguez turns toward his left, the female wearing a yellow jacket is standing within inches of PO Rodriguez, so much so that her face is not visible in the frame. PO Rodriguez pushes the female with his baton on her upper left shoulder and chest area stating, “Get back.” The woman raises her left arm and moves it toward PO Rodriguez's baton, stating, “[inaudible] ... fucking touch me,” and does not move farther back than the result of PO Rodriguez's push. The female is now facing PO Rodriguez and PO Rodriguez pushes the female again with his baton on her chest, causing the female to move backwards. PO Rodriguez says, “Get back” as he pushes the female with his baton (<<02:13 – 02:33>>).

As mentioned above in Allegation L, after Lieutenant Meyer instructed PO Rodriguez to “restore order,” PO Rodriguez took his straight baton and held it at either end with both his hands and extended his arms away from his body to push protestors out of the street. PO Rodriguez used his straight baton in particular, as he learned in training it was useful for “disorder control.” One female in the crowd, who PO Rodriguez could not further describe, grabbed his baton with both her hands in the middle of the baton. PO Rodriguez then pushed the female using his baton so that the female would release it. Both PO Rodriguez and the female fell to the ground as a result of the struggle over the baton. The female then “disappeared” into the crowd. PO Rodriguez did not remember any other particular interactions he had with protestors and did not see any other officer use their batons to push protestors back.

PO Rodriguez reviewed his body-worn camera footage, which captures him pushing a female in a yellow jacket with his baton, as mentioned above. PO Rodriguez explained that the female in the yellow jacket was not the female who grabbed his baton, as the female who did so was younger and it occurred later in the incident. PO Rodriguez said it was possible his body-worn camera battery died by the time this incident occurred. PO Rodriguez pushed the female in the yellow jacket with his baton due to the arrest that was occurring behind him and his attempt to clear the street. PO Rodriguez did not use his baton to push the female in the yellow jacket for any other reason.

Per the CTS+ database, as of January 4, 2021, Lieutenant Meyer was no longer an active member of the NYPD and thus he was not interviewed.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide Procedure 221-01.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Allegation (O) Force: Officers hit § 87(2)(b) against a vehicle.**

§ 87(2)(b) testified that a woman with olive complexion, brown hair, and approximately in her mid-20s, identified by the investigation as § 87(2)(b) went to check on a male who had been arrested by officers. § 87(2)(b) remained approximately two to three car lengths away from the officers. Approximately two to three officers then approached § 87(2)(b) and started to arrest her. The officers shoved § 87(2)(b) against the hood of a car, causing § 87(2)(b)'s torso and head to make contact with the car. § 87(2)(b) remained 15 feet away with her bicycle and shouted that § 87(2)(b) was not doing anything.

§ 87(2)(b) provided a cellphone video (BR 30), which begins with officers walking with a handcuffed male. A voice, presumably § 87(2)(b)'s, says, "Hey, you got my number? By heart?" § 87(2)(b) enters the frame wearing a red/pink t-shirt and dark shorts. § 87(2)(b) stands immediately next to and behind the officers walking with the male. § 87(2)(b) then provides her phone number to the male. A voice then says, "Officer, just get her in the van, too. Now she's going." An officer then grabs § 87(2)(b) from behind, around her waist area. § 87(2)(b) then moves toward parallel parked vehicles. § 87(2)(b) says, "Hey. Don't fucking touch her." The officers then arrest § 87(2)(b) near the front of a parallel parked vehicle. § 87(2)(b) screams, "Get the fuck off of her" (<<00:00 – 00:18>>).

§ 87(2)(b)'s cellphone video, taken from a nearby rooftop, also captures § 87(2)(b)'s arrest. § 87(2)(b) did not make any allegations on behalf of § 87(2)(b) in his testimony. In § 87(2)(b)'s video, a group of uniformed officers walk a handcuffed male down the street. § 87(2)(b) wearing a red/pink shirt and dark pants, enters the frame from the right. § 87(2)(b) stands directly behind the group of officers with the handcuffed male and provides her telephone number. An officer wearing a white shirt points at § 87(2)(b) and says, "Officer, get her in... [inaudible]." Two uniformed officers then grab § 87(2)(b) from behind. § 87(2)(b) and the officers then move toward parallel parked vehicles, before exiting the frame (<<08:22 – 08:36>>). § 87(2)(b) and two officers are then visible staring near the side of a parallel parked vehicle. § 87(2)(b) moves approximately one step backwards and the officers move § 87(2)(b) back toward the parallel parked vehicle (<<08:47 – 08:49>>).

§ 87(2)(b) was uncooperative with the investigation and therefore a statement was not obtained from her (see IAs for contact attempts).

Police Officer Grace McCaffrey of the 63<sup>rd</sup> Precinct, who was present at the location, recorded this incident on her body-worn camera (BR 31). § 87(2)(b) and officers enter the frame from the right and § 87(2)(b) stands against a parallel parked vehicle with officers behind her. Other officers enter the area and temporarily obstruct the view of § 87(2)(b) and the officers. When § 87(2)(b) and the officers become visible again, they have moved approximately one foot away from the parallel parked vehicle. The two officers then move § 87(2)(b) back toward the parallel parked vehicle, causing her chest to make contact with the vehicle. At no point does § 87(2)(b)'s head make contact with the vehicle. PO McCaffrey then grabs § 87(2)(b)'s right arm to assist the two officers trying to handcuff § 87(2)(b) (<<00:31 – 00:46>>).

§ 87(2)(g)

**Allegation (P) Force: Officers used physical force against § 87(2)(b).**

**Allegation (Q) Force: Officers used physical force against § 87(2)(b).**

**Allegation (R) Abuse of Authority: An officer damaged § 87(2)(b)'s property.**

**Allegation (S) Abuse of Authority: An officer threatened to arrest § 87(2)(b).**

**Allegation (T) Force: Officers struck individuals with a baton.**

### **Known facts and general descriptions**

As mentioned above, § 87(2)(b) provided his cellphone video footage of this incident, which captured § 87(2)(b) in handcuffs, known to the investigation as § 87(2)(b) stating, "I'm not okay. They smashed my face on the ground." PO Melendez and PO Cosenza are walking with § 87(2)(b) at the time she makes this statement. § 87(2)(b)'s video further captures a uniformed officer tell § 87(2)(b) "Get back on the sidewalk or you're getting arrested." § 87(2)(b) responds, "All right, man." § 87(2)(b) did not, however, raise these allegations during his statement.

The investigation established contact with § 87(2)(b) but she did not provide a statement due to her ongoing criminal case.

§ 87(2)(b) testified that while she was recording § 87(2)(b)'s arrest, three male officers approached her in the middle of the street. One of the officers, whom she could not describe, grabbed § 87(2)(b)'s bike from her hand, lifted it off the ground, and threw it across the street, causing a screw which holds the front wheel of the bike onto the frame to loosen. Officers then grabbed § 87(2)(b)'s shoulders and arms and pushed her into a parked van. § 87(2)(b) was arrested and released with a summons, though the officer who prepared her summons was not at the scene of her arrest.

§ 87(2)(b) as mentioned in Allegation O, provided cellphone video footage of the moments leading up to her arrest. As § 87(2)(b) approaches the area in which officers are arresting § 87(2)(b) screams, "Get the fuck off of her." § 87(2)(b) is directly behind the officers who are affecting § 87(2)(b)'s arrest at this time. A voice says, "Back," and the footage becomes shaky. A voice says, "Back up." § 87(2)(b) says, "Don't fucking touch me. Get your fucking hands off me, you dumb fucking cunt." The footage is still shaky and blurry at this time, and the faces, name plates, or shields of officers are not visible (<<00:16 – 00:26>>).

§ 87(2)(b) said that he saw officers, who he could not identify or describe, place two hands on opposite ends of their asps and use their asps to push protestors, as discussed above in Allegations M and N. § 87(2)(b) saw an officer in particular, who he could only describe as a "burly" male wearing a black mask like a bandana and a riot helmet, beat a female protestor with an asp, as the officer wrongly believed the female threw an object at an officer.

### **BWC**

The investigation received 37 body-worn camera videos in regard to this incident. Lieutenant Meyer recorded this incident on his body-worn camera (BR 32). In Lieutenant Meyer's body-worn camera footage, officers run toward the middle of the street. When Lieutenant Meyer arrives, a large group of both uniformed and plainclothes officers are on the ground, though their exact actions are not clearly captured in the footage. Lieutenant Meyer says, "Who threw that?" A male officer, who is in uniform, lifts § 87(2)(b) off the ground, with another officer who is wearing a baseball cap. Lieutenant Meyer says, "Cuff him up." The uniformed officer and the officer wearing a baseball cap appear to be handcuffing § 87(2)(b). A uniformed black male officer wearing a surgical mask also approaches for a short period of time before leaving the area. The uniformed

officer then walks away with § 87(2)(b) (<<03:35 – 04:16>).

Of the 37 body-worn camera videos received, none captured § 87(2)(b)'s interaction with the officer who threatened to arrest him, § 87(2)(b)'s arrest, or officers striking protestors with batons.

### **NYPD Documents**

The investigation received the Mass Arrest Report (BR 33) pertaining to the protests on the date of this incident in the vicinity of the Barclays Center. Per the document, § 87(2)(b) was arrested and issued a criminal court summons for § 87(2)(b), § 87(2)(a) 160.50 by PO Cosenza, and § 87(2)(b) was arrested and issued a criminal court summons for § 87(2)(b), § 87(2)(a) 160.50 by PO Rivas.

The investigation also received 22 Detail Rosters (BR 34) for protests in the vicinity of the Barclays Center. None of the Detail Rosters listed officers as assigned to 5<sup>th</sup> Avenue and either Bergen Street or Saint Marks Place. The locations on each of the 22 Detail Rosters were a block or more away from the incident location.

The investigation received two videos from TARU, but neither were from this incident location.

Further, the investigation received negative results for a TRI or MTPR prepared for § 87(2)(b) or § 87(2)(b).

### **Concurrent Investigations**

The investigation has no knowledge of any concurrent investigations into this incident.

### **Officers Interviewed**

As PO Cosenza was listed in the Mass Arrest Report as § 87(2)(b)'s arresting officer, the investigation interviewed her. PO Cosenza testified that when she arrived on scene, she saw PO Melendez at the corner of 5<sup>th</sup> Avenue and Bergen Street with a female prisoner, known to the investigation as § 87(2)(b) already in handcuffs. PO Melendez did not give PO Cosenza any information regarding § 87(2)(b)'s arrest, including whether force was used. § 87(2)(b) did not make any statements, including any complaints about force used against her during her arrest. PO Melendez collapsed to the ground, was ultimately seen by EMS, and was diagnosed with a concussion. Because of PO Melendez's injury, PO Cosenza walked § 87(2)(b) to the prisoner van for transport to the 78<sup>th</sup> Precinct. At the 78<sup>th</sup> Precinct stationhouse, Lieutenant Silva instructed PO Cosenza to issue § 87(2)(b) a summons because PO Melendez had been hurt.

PO Melendez was also interviewed in regard to § 87(2)(b)'s arrest. PO Melendez testified that approximately two minutes after his arrival, he was hit over the head by an unknown object, which caused him to fall to the ground. PO Melendez briefly stood up before falling to the ground unconscious. When PO Melendez regained consciousness, he was in the back of a police vehicle en route to the stationhouse. PO Melendez was diagnosed with a concussion, bruised ribs, and a bruised left hand, and did not work for two months as a result. PO Melendez was not sure how he sustained the bruised ribs and hand, but assumed it was when he fell. PO Melendez denied having any interaction with any protestors prior to his injury.

PO Melendez reviewed § 87(2)(b)'s cellphone video which captures § 87(2)(b) stating officers "smashed [her] face" into the ground. PO Melendez identified himself as the officer walking on § 87(2)(b)'s left, but he had no recollection of arresting § 87(2)(b) or being present at the time of her arrest, and denied "smashing" her face into the ground or using any physical force against her. PO Melendez did not know if the video was captured before or after he had been struck in the head with an unknown object.

PO Rivas testified that when he arrived on scene with Lieutenant Silva, approximately 50 or more protestors were in the street. The protestors were throwing liquids, bottles, and other objects, which PO Rivas could not describe, at the officers. PO Rivas remained primarily focused





**Allegation (U)** § 87(2)(b) [REDACTED]

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been party (BR 39-43).
- § 87(2)(b)
- Lieutenant Silva has been a member of service for 17 years and has been named a subject in two complaints and five allegations, none of which were substantiated. § 87(2)(g)
- PO Samusev has been a member of service for six years § 87(2)(g)
- PO Algahti has been a member of service for five years and has been named a subject in two prior CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- PO Rodriguez has been a member of service for 14 years and has been named a subject in six prior CCRB complaints and 11 allegations, four of which were substantiated:
  - 201904012 involved substantiated allegations of entry of premises, failure to provide RTKA card, search of premises, and threat to damage/seize property. The Board recommended formalized training and the NYPD imposed formalized training.
  - § 87(2)(g)
- PO Cosenza has been a member of service for four years and has been named a subject in one prior CCRB complaint and one allegation, which was substantiated:
  - 201903903 involved a substantiated allegation of refusal to process civilian complaint. The Board recommended formalized training and the NYPD imposed instructions.

- § 87(2)(g)
- PO Rivas has been a member of service for 14 years and has been named a subject in one prior CCRB case and one allegation, which was not substantiated. § 87(2)(g)
- PO Melendez has been a member of service for five years and this is the first complaint to which he has been named a subject.
- Lieutenant Meyer was named a subject in four complaints and five allegations, none of which were substantiated. Lieutenant Meyer's tenure is unknown as he is no longer listed as active in the CTS+ database. § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- As of July 14, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 45).
- According to the Office of Court Administration (OCA), § 87(2)(b) and § 87(2)(b) have no history of convictions in New York City (BR 46-51).

Squad No.: 14

Investigator: Casey McCann      Inv. Casey McCann      06/30/2021  
Signature      Print Title & Name      Date

Squad Leader: Cassandra Fenkel      IM Cassandra Fenkel      06/30/2021  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date